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June 1, 2018

David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: *Everglades College, Inc. v. NLRB*, No. 16-10341-AA and 10644-FF

Dear Mr. Smith:

This letter brief of the Intervenor-Respondent-Cross Petitioner Lisa Fikki is submitted in response to the Court's order of May 23, 2018, asking the parties to address the effect of the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, No. 16-285 (May 21, 2018), on this case.

1. The Intervenor concedes that the Supreme Court's decision in *Epic Systems* is dispositive on the question of whether the Employer's maintenance of the Employee Arbitration Agreement (EAA) was an unfair labor practice because it barred class, collective and other joint actions seeking to enforce workplace rights.

2. But the decision in *Epic Systems* has no bearing on the question of whether the maintenance of the EAA was an unfair labor practice because it would reasonably have been read by employees to bar the filing of unfair labor practice charges with the NLRB. This issue was fully briefed by the parties and addressed at oral argument. See NLRB Brief at 38-42; Intervenor's Brief at 36-40; Everglades Brief at 54.

As a consequence, the decision in *Epic Systems* also has no bearing on the issue of whether the Employer committed an unfair labor practice by firing the Intervenor for refusing to sign the EAA. The issue of whether the Employer committed an unfair labor practice by terminating the Intervenor for refusing to sign the unlawful EAA was briefed by the parties and addressed at oral argument. *See* NLRB Brief at 42-45; Intervenor's Brief at 41-44; Everglades Brief at 54-57.

Two Members of the three-Member panel of the NLRB concluded that the Employer could not lawfully require employees to agree to the EAA *both* because it barred class, collective and other joint actions seeking to enforce workplace rights *and* because it would reasonably have been read by employees to bar the filing of unfair labor practice charges with the NLRB. *See* D&O at 1 n. 2. The third Member, who dissented from the first ground, agreed on the second ground and expressly joined in the holding that "the Respondent violated the Act when it discharged Charging Party Lisa K. Fikki for refusing to sign the EAA." *Id.* at 2-3. The *Epic Systems* decision is in no way relevant to the unanimous conclusions of the three Board Members (1) that maintenance of the EAA was unlawful because it would reasonably be read to bar filing of charges with the Board and (2) that the Employer committed an unfair labor practice by firing the Intervenor for refusing to sign the unlawful agreement. The question of whether those unanimous conclusions were correct remains before the Court and is ripe for decision.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Letter Brief of the Intervenor-Respndent-Cross-Petitioner was filed with the Clerk of the Eleventh Circuit this 1st day of June 2018 using the CM/ECF system, which served copies of the Brief via electronic mail on all counsel of record.

Dated: June 1, 2018

/s/Harold Craig Becker
Harold Craig Becker
Counsel for Intervenor